

APR 10 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

BASILIO LOPEZ MOYA,

Petitioner - Appellant,

v.

GEORGE J. GIURBINO, Warden,

Respondent - Appellee.

No. 05-55344

D.C. No. CV-04-01565-IEG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted April 5, 2006^{**}

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Basilio Lopez Moya, a California state prisoner, appeals pro se from the district court's dismissal of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. We have jurisdiction pursuant to 28 U.S.C. § 2253. We review

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

de novo, *Brambles v. Duncan*, 412 F.3d 1066, 1069 (9th Cir. 2005), and we affirm.

Moya contends that his Fourth Amendment rights were violated when the police seized drug evidence found in the wheel of his car after using a density meter and a narcotics-sniffing canine. However, federal habeas review is precluded where the state has provided appellant “an opportunity for full and fair litigation of a Fourth Amendment claim.” *Stone v. Powell*, 428 U.S. 465, 482 (1976). Upon review of the record, we conclude that appellant took advantage of his opportunity to litigate this issue in state courts. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 899 (9th Cir. 1996). The district court therefore correctly dismissed Moya’s petition.

AFFIRMED.